

PUBLIC SUBMISSION

As of: January 18, 2012
Received: January 17, 2012
Status: Pending_Post
Tracking No. 80f98720
Comments Due: January 17, 2012
Submission Type: Web

Docket: CFPB-2011-0037

Request for Information Regarding Private Education Loans and Private Educational Lenders

Comment On: CFPB-2011-0037-0001

Request for Information Regarding Private Education Loans and Private Educational Lenders

Document: CFPB-2011-0037-DRAFT-1436

Comment on CFPB-2011-0037-0001

Submitter Information

pii

Address: Ohio

Organization: What?

General Comment

I applied for student loans in 1994 because I wanted an education, but I had no help from my parents and I didn't make enough money for rent, let alone tuition. So I visited my college's SL office, and was made to sit and watch a video about student loans (I think). I know this is no excuse, but I was only 19. I didn't pay any attention to the video. I just wanted some money to help me get through college. I did ask a counsellor what my payments would be approximately, and I was told around \$200 is the average payment. I thought that was a reasonable amount to pay, especially once I graduated and got a great paying job. But once I graduated, I didn't get the great paying job. So I went to graduate school, hoping that an advanced degree would make me more marketable. After receiving my MEd, I got a job as a teacher, making about \$35,000. I still could barely pay my rent, and then discovered that my SL payments were actually closer to \$400. So I deferred. And deferred. And deferred. Now, my husband shares my burden of an insurmountable SL debt, and struggle each month to pay the \$400 payment, but we do it because we want to be done with it. But had I known as a dumbass 19 yo kid that I would be signing my entire adult life away in SL payments, I would have remained a waitress instead of a teacher. I would have been better off financially. Thank you for the consideration of my story, and I hope it helps in some way. Thank you so much for bringing this issue into public awareness, because I feel so resentful that I wasn't better informed about how this would effect my life.

PUBLIC SUBMISSION

As of: January 18, 2012
Received: January 12, 2012
Status: Pending_Post
Tracking No. 80f94976
Comments Due: January 17, 2012
Submission Type: Web

Docket: CFPB-2011-0037

Request for Information Regarding Private Education Loans and Private Educational Lenders

Comment On: CFPB-2011-0037-0001

Request for Information Regarding Private Education Loans and Private Educational Lenders

Document: CFPB-2011-0037-DRAFT-1115

Comment on CFPB-2011-0037-0001

Submitter Information


Organization: Ohio State University

General Comment

I am a doctoral student who is working while finishing my dissertation. Therefore, my student loans are in repayment. While I do not have as much debt as many, my payments are still nearly \$500/month. I live in Washington, DC which is very expensive and it makes it very difficult to make ends meet. I used primarily governmental loans but had to use some private loans to make up the difference a few times. So that amount is much smaller for me and I'm trying to pay it off quickly.

I think that the information process about the repayment of loans is very difficult to sort through. Setting up payments and time frames and all that goes along with it requires a lot of research. In addition, the consolidation process was particularly opaque. Had a friend not guided me through the process, I probably would not have even tried it.

I really think that much more clarity is needed in the loans process. Clearly written and concise as possible within reason is what I want, not miracles!

The logo for MICUA (Maryland Independent College and University Association) features the acronym "MICUA" in a white serif font, centered within a solid yellow rectangular background.

Maryland Independent College
and University Association



January 17, 2012

Docket No. CFPB-2011-0037

Request for Information Regarding Private Education Loans and Private Educational Lenders

On behalf of the Maryland Independent College and University Association (MICUA), the Association of Independent Colleges and Universities of Ohio (AICUO), the Association of Independent Colleges and Universities in New Jersey (AICUNJ), and the Tennessee Independent Colleges and Universities Association (TICUA), we are pleased to respond to your request for information about private education loans at our member institutions. CFPB-2011-0037 states that the Consumer Finance Protection Bureau seeks information on private education loans, and related consumer financial products and services that are currently being offered to or used by students and their families for the financing of postsecondary education. The Bureau is seeking this information in response to a requirement in the Dodd-Frank Act that a report about various aspects of private loans be provided to Congress by July 21, 2012.

Our associations have significant experience with private loans. Two years ago, working extensively with financial aid offices from member institutions, the Private Loan Marketplace, a website which is the model for transparency in private loan selection, was deployed.

For many of the students who attend nonprofit colleges, private education loans fill the gap between available financial aid – federal, state, and institutional aid – and the amount that their families can afford to pay for tuition, fees, and other costs. Students attending public and private, non-profit colleges borrowed about \$8 billion in new private loans during 2011. As this is a large financial commitment, it is critical that students and their families have the best possible information before committing to a particular loan product.

Recognizing this, and with the expectation that better, neutral information would assist students and their families in getting the best deal in these loans, independent colleges in several states joined forces to help create the aforementioned Private Loan Marketplace, an online education-financing resource that allows participating institutions to provide students with a transparent process to evaluate private student loans, encourages students to engage in smart borrowing practices, and urges students to exhaust federal, state, and institutional grants and loans first, before applying for private student loans.

Unfortunately, the United States Department of Education (US DoE) branded the Private Loan Marketplace as a “preferred lender arrangement” under Section 601 of the Higher Education Opportunity Act. We strongly disagree with this determination for several reasons, which have been communicated to both the Department and Congressional staff.


The practical effect of this determination is that many campuses have refused to refer students to the Private Loan Marketplace (or any other preferred lender arrangement). The truth remains, however, that colleges and universities need to ensure that their students have choices; access to attractive, competitive loan products; and the knowledge they need to make smart decisions.

In response to the Bureau’s request, our associations surveyed financial aid directors at all member institutions and received 48 responses. Some key points derived from the survey data include:

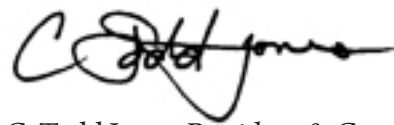
- Campuses put considerable time and attention into counseling students about loans, both federal and private, with new-loan counseling, exit counseling, and a growing number of financial literacy courses as part of orientation.
- Third-party sources of information are considered valuable but are not universally used, forcing students and families to go through the entire application process to obtain information about loan terms from the lenders themselves.
- Federally-mandated disclosures in their current form are not seen as helpful by the majority of respondents.
- Knowing a loan’s actual pricing before a borrower commits to an application process is important.

A copy of the raw data is attached.

Thank you for the opportunity to participate in the Bureau’s study of this important issue. If you have questions, any of us would be pleased to answer.



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SURVEY OF INDEPENDENT-COLLEGE FINANCIAL AID DIRECTORS
MARYLAND, NEW JERSEY, OHIO, AND TENNESSEE

Survey dates: Dec. 16, 2011 to Jan. 10, 2012

Respondents 48

Does your institution's website include a page where private/alternative loan information is found?

Yes 41

No 4

From what sources do your institution's students and their families obtain information about private education loans and private lenders?

3-5 year all-inclusive list 12

Preferred lender list 14

Link to comparison service
such as a Private Loan Marketplace 8

Other 7

Elm Select 2

FastChoice 3

StudentLendingAnalytics 1

Students are "on
their own" 2

Please comment on what sources are most helpful and accurate.

FastChoice 4

Institution's own website 3

Preferred Lender List 1

Scholarnet 1

Elm Select 1

Asked only of those who did not give information on their websites:

Respondents: 4

Other than a web page link, how does your office provide information about private loans to your students?

Printed lists of lenders 0

Brochures and other point-of-sale
literature from lenders 0

In one-on-one counseling sessions 3

We do not provide any information
about private loans 4

Why does your college or university not provide information on private loans to students or families on its web site?

Very few private loans used by students	1
Too much work to manage	1
Regulatory concerns	6
Other	
Allows us to talk specifically to students	1
Do not want to be seen as endorsing excessive borrowing	1

Does your office monitor what each lender charges students?

Yes, we monitor each lender's pricing	11
We know some, but not others	13
We don't ask	16
Other	
Refer to lender's website	1
Check only when lender is put on preferred lender list	1
Lenders send updates	1
Particulars are between the borrower and the lender.	1

How important do you consider knowing a loan's actual pricing before a borrower commits to an application process?

A critical factor	22
Of some importance	15
Not important	4
No response	6

How does your campus provide students with information about affordability, post-graduation payment option, and other issues relating to their student loans?

Entrance counseling at first loan taken	33
Counseling at each additional loan	3
Exit counseling	35
Referral to external source of information	23

Other

Financial literacy courses	5
Additional/informal conversations	5
Comprehensive website	1
Additional help on request	1
Ask them to contact lender	2
Notice to parents	1

What sources of information do your students and their families find to be most accurate and helpful about private education loans and private lenders?

Federally-mandated disclosures by lenders	15
Third party information services (Private Loan Marketplace, FastChoice, others)	25
Other (please specify)	
Financial aid office	2
Information from servicer	1
Needs are too variable to pin down one source	1
Information on web	1
Lenders	2
Their peers	1

What sources of information do YOU and your financial aid office colleagues find to be most accurate and helpful about private education loans and private lenders?

Federally-mandated disclosures by lenders	22
Third party information services (Private Loan Marketplace, FastChoice, others)	24
Other (please specify)	
Working with lenders	6
Working with servicers	1
Continuing education	1
Information on web	2

To the Consumer Financial Protection Bureau:

My name is Stanley A. Hirtle. I am a legal services attorney in Dayton, Ohio. During the time relevant to this letter, I worked first for Legal Aid Society of Dayton and now for its successor Advocates for Basic Legal Equality. I thank you for this opportunity to inform the Consumer Financial Protection Bureau concerning why serious regulation of trade schools and the student loans that fund them, is required.

Between 2003 and 2008, I was attorney for several former truck driving school students who were Plaintiffs in class action litigation against Five Star Truck Driving School (which had the corporate name DDH, Inc., and later Franklin Career Services, LLC.) and the trustee for several securitization trusts which held student loans signed by the former students of the school. *Appleberry v. DDH Inc.*, Butler County Ohio Common Pleas Court, Case No. 2003-01-0162.

Our case was a small part of a national scandal of trade school fraud, funded by private student loans. Sixty to eighty schools or chains of schools, mostly truck driving schools, ran diploma mills and committed fraudulent activities against their students. Their income came from a private student lender, Student Finance Corp., which issued high interest private loans to students who attended the schools and then securitized the loans.

What happened here was a dry run for the mortgage meltdown that sank the economy into recession and led to creation of the Consumer Financial Protection Bureau. Unfortunately, the episode got virtually no media attention outside of securitization circles. Furthermore, the finance industry was or should have been aware of these abuses that were being litigated even as they continued a similar model of mortgage lending.

Student Financial Corporation

Student Financial Corp. (SFC) was a lender controlled by Andrew Yao of Radnor, Pennsylvania, a suburb of Philadelphia. SFC made high interest (over 20%) private loans to students attending truck driving schools. SFC loans funded about ninety school chains in the South, Southeast, and Midwest.

These loans were securitized quarterly. About 8,000 loans were bundled together into trusts, which sold securities to investors. Investment bankers arranged the securitizations. The trusts were rated by rating agencies. Two "Credit Enhancement Insurance" companies issued insurance policies which guaranteed the profits of the securitizations, in order to make the securities attractive to investors. The difference between the high interest rates for the loans and the much lower rates of the securities made the securitization process profitable. A major national bank was the trustee for eight of the securitization trusts that owned the loans. The trusts employed servicing companies and collection agencies.

Because of the low quality and tactics of the schools, a large number of students (once estimated at 80%) defaulted on their loans.

SFC was forced into bankruptcy after a credit enhancement insurance company found out about the real default rates and refused to insure any more securitizations. Without this flow of capital, SFC could then not pay the partial payments it was holding back from the schools, and several schools filed an involuntary bankruptcy against SFC. The bankruptcy was eventually converted to Chapter 7 (liquidation).

The bankruptcy trustee, schools, insurers and investors began suing each other. However, for the most part, no one in authority did anything to protect any of the student victims.

In various lawsuits, the lender and schools were accused of running a Ponzi scheme, by getting schools to sign up students who they knew could not get jobs, secretly paying the student loans of defaulted borrowers to disguise the default rates, creating fraudulent students or cosigners to generate loans, forging loan and cosigner documents, and other fraudulent activities. The owner, Yao, was accused of looting SFC in order to live like a “corporate prince,” cavort with Playboy bunnies, and engage in other luxurious activities. Royal Indemnity Company’s Rule 2004 Motion for an Order Authorizing Subpoenas to Compel Attendance for Depositions and For Production of Certain Documents, In re Student Finance Corp. US Bankr Court, D. Del, Case 02-11620.

Five Star Truck Driving School

The school in our case, Five Star Truck Driving School in Middletown, Ohio, was typical in many ways. The school was one in a large chain of corporations (hereinafter the “Franklin Schools”) controlled by a Kentucky attorney and his brother. They purchased a number of schools in the 1999-2000 period and began using SFC to fund their students’ training. A well-known national political figure became a partner and CEO in one of the corporations.

The students signed up for a two-week course designed to procure a Class A Chauffeur Driving License or “CDL” needed to drive a semi trailer truck. Two weeks is the minimum time Ohio law permitted for trucking schools, but most respectable truck driving programs require two weeks for an experienced driver and months to adequately train a novice. Students took out private student loans with Student Financial Corp. at around \$7,500 at an interest rate above 20% for two weeks of school. The total of payments was around \$17,500.

Students were lead to believe that trucking companies would hire them and pay the costs of their schooling. They were also promised supposed “lifetime” job placement. After a student began the course, the school would conduct a check of his driving record. If a student could not be hired as a driver due to his driving record, they would require the student to sign a waiver of job placement a few days into the course. They told the students if they left the school and did not sign the waiver, they would owe the entire tuition for the course.

Students received inadequate hours of instruction, the equipment was faulty, and some unlicensed instructors were used. Students also signed money orders made out to SFC. The school would send these money orders in as loan payments to disguise the loan default rate from securitization investors.

After trucking companies complained about the low quality of Five Star graduates, the State of Ohio tried unsuccessfully to take away the school's license. It won an administrative hearing but was not successful in having this upheld in court.

In our case, the school sent a group of students for CDL testing at the end of the course to a state-approved test site operated by a local trucking company. The company made an "independent contract" with one of its former drivers to give the tests. He gave bogus tests and passed everyone. He was caught doing this by federal authorities and convicted in federal court for falsification. He tested about four hundred people, about 200 of whom were Five Star students.

After the tester was caught, Ohio revoked the CDLs of everyone who he had tested, and made them retest. Many could not afford to pay for the retest or could not pass it. Many lost trucking jobs as a result. Most had loans that were in default and subject to collection. Many of these students were not high school graduates. Many were from rural or Appalachian areas, while others were African Americans from urban areas – all people who had few employment options paying as much as was promised on the various television and website advertisements for the school. These people had significant hardships imposed on them because they went to this school. They became our clients in the litigation.

The Franklin Schools had a loan default rate of 93%. Their former students are being dunned by the loan holders or their collection agents, and the default has been reported to credit bureaus. Eventually, successors-in-interest filed suit against a number of former students of these schools, although the loans of our class of improperly tested students were dropped in settlement.

After Student Finance Corp. went bankrupt and the truck driving schools closed, the owners bought another school named Decker College and used similar tactics to obtain federally insured student loans for longer and more lucrative programs in construction and electrical. They were eventually raided by federal authorities.

Other Litigation about Student Finance Corp.

There has been a lot of litigation about SFC and the schools it funded, but, to my knowledge, our case was the only one brought on behalf of consumers. The litigation includes the following:

1. Student Finance Corporation's bankruptcy, U.S. Bankruptcy Court, D. Delaware, Case No. 02-11620. Affidavits by investigators William J. Spears and William J. Hibberd allege vast and somewhat general wrongdoing against Yao and SFC.
2. In 2005, the bankruptcy trustee in the bankruptcy of Student Finance Corporation (SFC) (D. Del. U.S. Bankruptcy Court, D. Delaware, Case No. 02-11620) filed approximately 90 adversary complaints against various schools and sets of affiliated schools, mostly truck driving schools. Case numbers of the adversaries are roughly 04-56406 to 04-56491. One case was filed against Franklin Career Services Inc. and its affiliates, including Five

Star Adv. # 04-56416. All of these schools are alleged to have engaged in fraudulent activities against students, and been paid by private high interest student loans from Student Finance Corporation. The adversary complaints allege that SFC made fraudulent and preferential transfers to the schools, and also claims that the schools breached their contractual agreement with SFC.

3. A credit enhancement insurer sued the owner of Five Star, all his corporations and all his schools for RICO, fraud, negligence and breach of contract, in the US District Court, W. D Ky. in Louisville. Case # 3:04CV38-S.
4. Franklin Career Services LLC, owner of our school, filed bankruptcy in January 2006, US Bankruptcy Court, WD Ky. case 06-30010. The Decker College chain also filed bankruptcy. US Bankruptcy Court, WD Ky. case 05-61805.
5. The credit enhancement insurers sued each other, US Dist. Ct. D. Del., Case 02-CV-1294 and won a judgment for \$269,851,527.00. The case was appealed to the 3rd Circuit, Case 02-01294.
6. A warehouse lender involved in the securitization, sued an insurer in US Dist CT., D. Del. case 02-CV-1361 and obtained a judgment.
7. Other cases are alluded to in some of the pleadings or in Five Star's discovery. One is in the 58th District Court in Beaumont TX, #D167370.

Issues for Your Attention

This incident is stunning evidence of why there needs to be an active Consumer Financial Protection Agency. There are enormous numbers of victims of all of the SFC-funded schools nationwide. Many are no doubt subject to collection and bad credit reporting in exchange for worthless education.

For the Franklin Schools alone there were at least eight trusts for 2000-2001 with over 8,000 loans per trust. There are also loans still owned by SFC's bankruptcy estate. The Franklin Schools themselves allegedly got \$117 million in loans over four years.

At best, the schools and loans have been shown to be overpriced, with the education provided by the schools nothing close to what was promised, and instances of fraud widespread.

At worst, this is a privately funded version of the great trade school scams of the 1980s which were funded by federally-guaranteed student loans. I spent many years dealing with the rash of poor quality and fraudulent trade schools that existed during that period. The federal student loan programs eventually issued regulations to correct many of the abuses of that system. However, the securitization process allowed another funding stream to fund another round of abusive schools. Identically as with mortgages, the supply of money available for loans generated demand and an industry developed that created borrowers, caring nothing about the quality of the loans or the education that borrowers were purchasing.

There were numerous barriers to relief for the borrowers. First, legal relief was not economically viable. We and another legal services program represented our small portion of the victims of this large-scale abuse. We were not able to get assistance from any government agency, such as the Attorney Generals' office or the FTC. We recovered in settlement a small amount of attorneys' fees that paid a small percentage of the many hours we devoted to this case. No private counsel considered the case economically viable, and for good reason.

Second, there were legal barriers to relief. The trusts that owned the loans moved to dismiss our case arguing that our courts did not have jurisdiction over them because they did not have sufficient contacts with our state in which the school was located and the events occurred. Fortunately, they were not successful, but a number of other courts have accepted this argument in other cases.

Third, during the period in question the lender placed a mandatory arbitration clause in their loan agreement. We faced a motion to compel arbitration. Most former students I have interviewed were not high school graduates and had no idea what mandatory arbitration means. Students were called out of their classes to sign loan documents in situations that encouraged signing without reading or calling attorneys to discuss the meaning of arbitration. Fortunately the case settled without a ruling on this, as the case law continues to favor arbitration even in unfair situations. Mandatory arbitration is always abusive when it is imposed on individual consumers by lenders and other "repeat players" to whom arbitration providers have incentives to be responsive. The Consumer Financial Protection Bureau should carry out the required study and determine that arbitration is always an unfair, deceptive or abusive practice which should be banned in all consumer transactions.

Finally, student loans have special protections in bankruptcy which makes them particularly attractive to lenders and particularly harmful to borrowers even if the education is legitimate. Perceived abuses of bankruptcy by high paying professionals, which lead to these protections for student loans, are less relevant today in an era where education is much more expensive, borrowing is much more prevalent and employment after school is much more problematic. Until Congress revisits the issue the Consumer Financial Protection Bureau needs to be particularly vigilant in the area of private student loans.

Thank you for your attention. Feel free to call with questions.

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Appendix

Documents worth reviewing regarding Student Finance Corp and various truck driving schools:

Charles A. Stanziale, Jr., Chapter 7 Trustee Of Student Finance Corporation Against Franklin Career Services, Inc., Franklin Career Services LLC, et al.. US Bankr. Ct. D. Del. # 04-56416.

Complaint

Royal Indemnity Co v. Franklin Career Services Inc., US District Court, W. D Ky. in Louisville. Case # 3:04CV38-S.

Complaint

Student Finance Corporation's bankruptcy, U.S. Bankruptcy Court, D. Delaware, Case No. 02-11620.

Doc 493

Affidavit Declaration of William J. Spears (Entered: 09/02/2003)

Doc 494

Pre-Trial Brief in Support of the Acting United States Trustee's Motion to Appoint a Chapter 11 Trustee or, Alternatively, to Convert Case to Case Under Chapter 7 (Entered: 09/02/2003)

Doc 496

Affidavit Declaration of William J. Hibberd (Entered: 09/02/2003)

Doc 1040

Adversary status report, Judge Phillip's cases 12/7/04

Doc 1041

Adversary status report, Judge Rosenthal's cases 12/7/04

Doc 1120

Adversary status report, Judge Sullivan's cases 2/2/05

Appleberry v. DDH Inc., (our case) Butler County Ohio Common Pleas Court, #2003-01-0162.

Second amended Complaint filed 09/15/2003

Motion by Trusts to dismiss for want of Jurisdiction, filed 10/23/2003